

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: RAILWAY INDUSTRY
EMPLOYEE NO-POACH ANTITRUST
LITIGATION

This Document Relates to:
ALL ACTIONS

Master Docket: Misc. No. 18-798

MDL No. 2850

**APPLICATION TO APPOINT KELLY K. IVERSON AND CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP, AS LIAISON COUNSEL**

Kelly K. Iverson and Carlson Lynch Sweet Kilpela & Carpenter, LLP (“Carlson Lynch”),
counsel for Plaintiff Joann Agostini,¹ hereby applies for appointment as Liaison Counsel:

I. The Appointment of Liaison Counsel Would Be Beneficial in This Litigation

In this multidistrict litigation (“MDL”) proceeding, most of the firms moving for lead counsel do not have a local office. Where an out-of-town attorney is appointed as lead counsel, courts generally appoint a local firm to serve as liaison counsel and assign them the additional responsibility² of advising lead counsel as to local practices and procedures.³ *See e.g., Plumbers & Pipefitters Local 562 Pension Fund v. MGIC Investment Corp.*, 256 F.R.D. 620, 626 (E.D. Wis. 2009); *Ferrari v. Gisch*, 225 F.R.D. 599, 610–11 (C.D. Cal. 2004); *Holley v. Kitty Hawk, Inc.*, 200

¹ Ms. Iverson and Carlson Lynch are currently counsel representing Plaintiff Joann Agostini, Civil Action No. 2:18-cv-1206. In lieu of submitting for lead counsel, Ms. Iverson submits her leadership papers seeking appointment as local liaison counsel. Carlson Lynch is also co-counsel with Karin Garvey and Labaton Sucharow LLP representing Plaintiff Omar Sey, Civil Action No. 2:18-cv-1090.

² The specific responsibilities of liaison counsel vary depending on the court’s preferred organizational structure, but liaison counsel are typically charged with administrative and logistical tasks and any other work designated to them by lead counsel.

³ The *Manual for Complex Litigation* also recognizes that liaison counsel is typically a firm with offices in the same area as the court where the action is pending. *See* MCL § 10.221.

F.R.D. 275, 282 (N.D. Tex. 2001).⁴ Appointment of a local liaison counsel offers opportunities for the plaintiffs' attorneys to avoid unnecessary travel and expenses. When lead counsel's appearance in court is not essential, liaison counsel can represent the plaintiffs on short notice at no travel cost. Additionally, the liaison's offices can be used for meetings or depositions without incurring extra costs for space rental.

II. Kelly K. Iverson and Carlson Lynch are Qualified To Serve as Liaison Counsel in this Action

Kelly Iverson is a partner in the seventeen-attorney firm of Carlson Lynch, which has dedicated itself to representing plaintiffs in consumer, employment, antitrust, financial services, and civil rights litigation. Ms. Iverson has spent her legal career managing complex litigations, including class actions. Ms. Iverson's Resume is attached hereto as **Exhibit A**, and Carlson Lynch's firm resume is attached hereto as **Exhibit B**.

A. Attorney Iverson is an Experienced Litigator

Ms. Iverson has litigated cases from pre-suit investigation, through fact and expert discovery, and ultimately as trial and appellate counsel. In 2015, she served as lead trial counsel in a medical malpractice trial in the Northern District of West Virginia, obtaining a verdict in plaintiff's favor for the maximum possible statutory damages. Ms. Iverson is currently co-lead counsel in numerous class action litigations pending in this Court as well as courts around the

⁴ Judges in this District have appointed liaison counsel on numerous occasions in a variety of actions. *See, e.g., Ortiz v. United States Steel Corp.*, 2017 WL 3503142, at *4 (W.D. Pa. Aug. 16, 2017) (Bissoon, J.) (appointing lead and liaison counsel in consolidation of two securities actions); *Gaer v. Education Management Corp.*, 2010 WL 4687791, at *4 (W.D. Pa. Nov. 10, 2010) (Mitchell, M.J.); *In re PNC Financial Services Group, Inc.*, 440 F.Supp.2d 421, 424 (W.D. Pa. 2006) (Cercone, J.) (noting prior appointment of Pittsburgh-based liaison attorney in consolidated securities fraud action); *Lazy Oil Co. v. Wotco Corp.*, 95 F.Supp.2d 290, 293 (W.D. Pa. 1997) (McLaughlin, J.) (noting prior appointment of Pittsburgh-based attorney as liaison counsel in consolidated antitrust action).

country. She also currently serves as a committee member for the leadership teams in the following MDLs: *In re Equifax, Inc. Customer Data Security Breach Litigation* (N.D.Ga.) and *In re Arby's Restaurant Group, Inc. Data Security Litig.* (N.D. Ga.), as well as the following consolidated litigation: *First Choice Fed. Credit Union v. The Wendy's Co.* (W.D. Pa.).

Ms. Iverson was recently appointed co-lead class counsel by the Honorable Lisa Pupo Lenihan in *Flynn v. Concord Hospitality Enterprises Co.* (W.D. Pa.). Additionally, Ms. Iverson's partners at Carlson Lynch have been appointed as co-lead counsel in numerous MDLs, including on behalf of the financial institution plaintiffs in one of the most high-profile MDLs currently pending: *In re Equifax, Inc. Customer Data Security Breach Litig.*, MDL 2800 (N.D. Ga.).⁵

Ms. Iverson's proven track record of successful litigation, including class action litigation, as well as her involvement in MDLs around the country, evidences her ability to help lead counsel efficiently manage this litigation and effectively advocate on behalf of the plaintiffs and putative classes at lead counsel's direction.

B. Attorney Iverson and her firm have Knowledge of Local Procedures

Ms. Iverson has gained extensive experience litigating in the Western District of Pennsylvania throughout the course of her career and is familiar with the local rules and procedures of this Court. To that end, Ms. Iverson has already worked cooperatively with all Plaintiffs' counsel

⁵ Additional examples of cases in which Carlson Lynch attorneys have served in leadership roles include: *First Choice Federal Credit Union v. The Wendy's Co., et al.*, No. 2:16-cv-0506 (W.D. Pa.); *In re: Home Depot, Inc., Customer Data Security Breach Litig.*, MDL No. 2583 (N.D. Ga.); *In re: Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.); *In re Vizio, Inc. Consumer Privacy Litig.*, MDL No. 2693 (C.D. Cal.); *In re: Community Health Systems, Inc. Customer Data Security Breach Litig.*, MDL No. 2595 (N.D. Ala.), *Greater Chautauqua Fed. Credit Union v. Kmart Corp.*, No. 1:15-cv-02228 (N.D. Ill.); *In re: Ashley Madison Customer Data Security Breach Litig.*, No. 4:15-md-2669 (E.D. Mo.); *Bellwether Community Credit Union v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01102 (D. Colo.); and *In Re Blue Cross Blue Shield Antitrust Litigation*, MDL No. 2406, (N.D. Ala.).

in this case to ensure their familiarity with this Court's E-Discovery Program in light of this Court's request for counsel to propose an E-Discovery Special Master.

Carlson Lynch also has experience litigating in the antitrust area. Currently, Carlson Lynch is appointed to the Litigation Committee in *In Re Blue Cross Blue Shield Antitrust Litigation*, MDL No. 2406, (N.D. Ala.), where it represents healthcare subscriber plaintiffs in four states in this nationwide class action challenging the anti-competitive practices of Blue Cross/Blue Shield's nationwide network of local insurers who do not compete with each other based on geographic boundaries. Ms. Iverson and Carlson Lynch have the necessary knowledge and skills to be an asset to lead counsel in this action if appointed as local liaison counsel.

C. Carlson Lynch has the Resources Necessary to Devote to this Litigation

Carlson Lynch is located only a few blocks away from the U.S. Courthouse and has room and resources available for lead counsel to utilize whenever needed in this action. Additionally, as demonstrated by its success in the actions described in the attached resumes, Carlson Lynch has more than sufficient resources to contribute in its proportionate share with lead counsel in order to advance this litigation in a timely manner.

D. Attorney Iverson and Carlson Lynch have a Track Record of Working Cooperatively with Co-counsel, Opposing Counsel, and the Court

Often, the greatest challenge in appointing a leadership structure in an MDL is appointing counsel that will work cooperatively and collaboratively with other plaintiffs' counsel in the prosecution of the case. Many of the lawyers nationwide who litigate on behalf of plaintiffs have formed healthy and productive working relationships with one another. Ms. Iverson proudly submits that she is part of that group of lawyers, and is fully capable of working with, and/or coordinating the work of, any of the lawyers in this case and can and will work cooperatively with

defense counsel in order to secure a just, speedy, and inexpensive determination in this action.⁶ Indeed, Carlson Lynch has a history of working collaboratively with many of the Plaintiffs' counsel involved in this litigation.⁷

III. Conclusion

For all of the reasons stated above, the undersigned respectfully requests this Court appoint Kelly K. Iverson and Carlson Lynch Sweet Kilpela & Carpenter, LLP as Liaison Counsel in this MDL.

Dated: September 11, 2018

/s/ Kelly K. Iverson
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⁶ While willing and able to work with any of the counsel in this MDL, Ms. Iverson supports the petition of her co-counsel in *Sey*, Karin Garvey and Labaton Sucharow LLP, to lead this case.

⁷ For example, Carlson Lynch has previously worked with Labaton Sucharow LLP; Kessler Topaz Meltzer & Check, LLP; Lief Cabraser Heimann & Bernstein, LLP; Gustafson Gluek PLLC; Goldman Scarlato & Penny, P.C.; Girard Gibbs LLP; Hausfeld LLP; Kaplan Fox & Kilsheimer, LLP; and Cuneo Gilbert & Laduca, LLP.

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2018, a true and correct copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Kelly K. Iverson
Kelly K. Iverson